

## UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 7625 Dorcas Street, Philadelphia, PA 19111

Address of Defendant: 200 Stevens Drive, Philadelphia, PA 19113

Place of Accident, Incident or Transaction: Philadelphia, PA (Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?  
(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a)) Yes ☐ No ☐

Does this case involve multidistrict litigation possibilities? Yes ☐ No ☒

RELATED CASE, IF ANY:

Case Number: \_\_\_\_\_ Judge \_\_\_\_\_ Date Terminated: \_\_\_\_\_

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?

Yes ☐ No ☒

2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?

Yes ☐ No ☒

3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?

Yes ☐ No ☒

4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?

Yes ☐ No ☒

CIVIL: (Place    in ONE CATEGORY ONLY)

A. Federal Question Cases:

1. ☐ Indemnity Contract, Marine Contract, and All Other Contracts
2. ☐ FELA
3. ☐ Jones Act-Personal Injury
4. ☐ Antitrust
5. ☐ Patent
6. ☐ Labor-Management Relations
7. ☐ Civil Rights
8. ☐ Habeas Corpus
9. ☐ Securities Act(s) Cases

B. Diversity Jurisdiction Cases:

1. ☐ Insurance Contract and Other Contracts
2. ☐ Airplane Personal Injury
3. ☐ Assault, Defamation
4. ☐ Marine Personal Injury
5. ☐ Motor Vehicle Personal Injury
6. ☐ Other Personal Injury (Please specify)
7. ☐ Products Liability
8. ☐ Products Liability — Asbestos
9. ☐ All other Diversity Cases

10. ☐ Social Security Review Cases

(Please specify)

11. ☒ All other Federal Question Cases 28 U.S.C. §1441; Notice of Removal

(Please specify)

### ARBITRATION CERTIFICATION

(Check Appropriate Category)

I, William C. McGovern, counsel of record do hereby certify:

☐ Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;

☒ Relief other than monetary damages is sought.

DATE: 2/23/11

William C. McGovern

Attorney-at-Law

Attorney I.D.# **18356**

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 2/23/11

William C. McGovern

Attorney-at-Law

Attorney I.D.# **18356**

## APPENDIX G

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA

Avrum M. Baum, as parent and guardian of,  
Chaya Baum, Individually and on behalf :  
of all others similarly situated :  
V. :

Civil Action

No: \_\_\_\_\_

Keystone Mercy Health Plan and :  
AmeriHealth Mercy Health Plan :

## DISCLOSURE STATEMENT FORM

Please check one box:

- ☒ The nongovernmental corporate party, Keystone Mercy Health Plan, in the above listed civil action does not have any parent corporation and publicly held corporation that owns 10% or more of its stock.
- ☐ The nongovernmental corporate party, \_\_\_\_\_, in the above listed civil action has the following parent corporation(s) and publicly held corporation(s) that owns 10% or more of its stock:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2/23/11

Date

William C. McKeen

Signature

Counsel for: Keystone Mercy Health Plan and  
Amerihealth Mercy Health Plan

**Federal Rule of Civil Procedure 7.1 Disclosure Statement**

- (a) WHO MUST FILE; CONTENTS. A nongovernmental corporate party must file two copies of a disclosure statement that:
- (1) identifies any parent corporation and any publicly held corporation owning 10% or more of its stock; or
  - (2) states that there is no such corporation.
- (b) TIME TO FILE; SUPPLEMENTAL FILING. A party must:
- (1) file the disclosure statement with its first appearance, pleading, petition, motion, response, or other request addressed to the court; and
  - (2) promptly file a supplemental statement if any required information changes.

## APPENDIX G

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA

Avrum M. Baum, as parent and guardian  
of Chaya Baum, Individually and on :  
behalf of all others similarly situated :  
V. :

Civil Action

No: \_\_\_\_\_

Keystone Mercy Health Plan and :  
AmeriHealth Mercy Health Plan :

## DISCLOSURE STATEMENT FORM

Please check one box:

☒ The nongovernmental corporate party, AmeriHealth Mercy Health Plan, in the above listed civil action does not have any parent corporation and publicly held corporation that owns 10% or more of its stock.

☐ The nongovernmental corporate party, \_\_\_\_\_, in the above listed civil action has the following parent corporation(s) and publicly held corporation(s) that owns 10% or more of its stock:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2/23/11

Date

William C. McNamee

Signature

Counsel for: Keystone Mercy Health Plan and  
AmeriHealth Mercy Health Plan

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(1) file the disclosure statement with its first appearance, pleading, petition, motion, response, or other request addressed to the court; and

(2) promptly file a supplemental statement if any required information changes.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**CASE MANAGEMENT TRACK DESIGNATION FORM**

Avrum M. Baum

CIVIL ACTION

Vs.

Keystone Mercy Health Plan and  
AmeriHealth Mercy Health Plan

No.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

**SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:**

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ( )
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ( )
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ( )
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ( )
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ( X )
- (f) Standard Management – Cases that do not fall into any one of the other tracks. ( )

2/23/11

William C. McGovern

Date

Attorney-at-law

Attorney for Defendants

215-575-4236

215-563-2583

wmcgovern@rawle.com

Telephone

FAX Number

E-Mail Address

JS 44 (Rev. 12/07)

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

**I. (a) PLAINTIFFS**

Avrum M. Baum

**DEFENDANTS**
 Keystone Mercy Health Plan  
 AmieriHealth Mercy Health Plan

 County of Residence of First Listed Defendant Philadelphia  
 (IN U.S. PLAINTIFF CASES ONLY)

 NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE  
 LAND INVOLVED.

Attorneys (If Known)

 Rawie & Henderson, LLP 1339 Chestnut Street, One South  
 Penn Square, Philadelphia, PA 19107 215-415-4200

 (b) County of Residence of First Listed Plaintiff Philadelphia  
 (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

 Marc L. Ackerman, Brodsky & Smith, LLC Two Bala Plaza, Suite  
 602, Bala Cynwyd, PA 19004 610-667-6200
**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   |                                       |                            |   |                            |                                       |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
|   | PTF                                   | DEF                        |   | PTF                        | DEF                                   |
| Citizen of This State                   | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2            | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5            |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6            |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input checked="" type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

**V. ORIGIN**

(Place an "X" in One Box Only)

- ☐ 1 Original Proceeding
- ☒ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 U.S.C. §1441

Brief description of cause:

Notice of Removal of Case - (Plaintiff filed as class action in Court of Common Pleas, Philadelphia)**VII. REQUESTED IN COMPLAINT:**
☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
**DEMAND \$**

CHECK YES only if demanded in complaint:

**JURY DEMAND:** ☐ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

2/23/11

SIGNATURE OF ATTORNEY OF RECORD

William C. McNamee

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_



2. Defendants accepted service of the Complaint on February 3, 2011. Defendants have attached a copy of all process and pleadings served upon it in accordance with 28 U.S.C. §1446(a). There have been no orders issued in the matter.

## **II. THE PARTIES**

3. Defendant Keystone Mercy Health Plan is a general partnership organized under the laws of Pennsylvania with its principal place of business located at 200 Stevens Drive, Philadelphia, Pa. 19113.

4. Defendant AmeriHealth Mercy Health Plan is a general partnership organized under the laws of Pennsylvania with its principal place of business located at 200 Stevens Drive, Philadelphia, Pa. 19113.

5. Plaintiff alleges that he is the parent and guardian of Chaya Baum, who has a health insurance policy with Defendant Keystone Mercy Health Plan, and purports to bring this class action complaint on behalf of himself and all other similarly situated individuals. (*See* Compl., at ¶1).

## **III. PLAINTIFF'S ALLEGATIONS**

6. Plaintiff alleges that on September 20, 2010, a USB drive containing health information of more than 280,000 individuals insured by Keystone Mercy Health Plan and AmeriHealth Mercy Health Plan, “went missing from the corporate offices” of Keystone Mercy Health Plan and AmeriHealth Mercy Health Plan. (Compl., at ¶22.)



7. Defendants informed affected individuals, including Plaintiff, of the loss of the USB drive by letter on October 29, 2010. (Compl., at ¶23.) In their notification letter, Defendants advised affected individuals of subsequent investigations and measures taken by Defendants to mitigate potential adverse events stemming from the loss, including credit monitoring services. (Compl., at ¶24).

8. Plaintiff alleges that Defendants' actions violated standards created by the Health Insurance Portability & Accountability Act ("HIPAA") 42 U.S.C. § 1301 *et seq.*, specifically its corresponding regulations at 45 C.F.R. 164.530, common law, and 73 P.S. § 201-204, Pa. Code § 146c. (Compl., at ¶2.) Specifically, Plaintiff alleges:

- a. "Keystone never identified the precise nature of the lost personal information contained on the missing Flash Drive, saying simply that the information lost was 'health screening information.'" (Compl., at ¶25).
- b. "[T]he personal information contained on the lost Flash Drive included, but was not limited to, names, addresses, phone numbers, both AmeriHealth and Keystone insurance identification numbers, full and partial social security numbers, sensitive financial information, and sensitive health histories of Plaintiff and other Class members." (Compl., at ¶26).
- c. "Defendants permitted their employees to routinely transport the Flash Drive to community health fairs, notwithstanding that the Flash Drive contained private and personal PHI data that could be wholly accessed either by unauthorized individuals or by individuals authorized to access only select portions of that information. Defendants were at least negligent

in permitting the transportation of the Flash Drive, which contained hundreds of thousands of sensitive records, to health fairs.” (Compl., at ¶27).

d. “[T]he lost Flash Drive was not encrypted or otherwise protected, allowing unfettered access to Plaintiff’s and other Class members’ private and personal information.” (Compl., at ¶28).

9. Plaintiff included three counts in his Complaint. Like the factual allegations, the majority of the counts focus on HIPAA or specific duties created under HIPAA, or more specifically 45 C.F.R. §164.530.

a. Count I (violation of the Pennsylvania Unfair Trade Practices and Consumer Protection Law): Plaintiff alleges that Defendants violated 73 P.S. §§ 201-2(4)(xiv) and (xxi) which prohibits unfair methods of competition or unfair or deceptive acts or practices.” (Compl., at ¶31). In support of this allegation, Plaintiff asserts that Defendants “fail[ed] to comply with the terms of written guarantees or warranties given to the Plaintiff and the other Class members at, prior to, or after a contract for the purchase of goods or services was made.” Further, Plaintiff asserts Defendants engaged in “fraudulent or deceptive conduct which created a likelihood of confusion or misunderstanding . . . because Defendants created confusion or misunderstanding about the supposed safeguards Defendants purportedly had in place to ensure that PHI...was adequately protected.” (Compl., at ¶33).

b. Count II (negligence): Plaintiff alleges, “Defendants failed to exercise reasonable care and also failed to provide Plaintiff and the Class with prompt and sufficient

notice that their PHI was compromised, breaching their duty to Plaintiff and Class.” (Compl., at ¶34.) Plaintiff further alleges that, “[d]efendants’ failure to take proper security measures to protect Plaintiff’s and the Class’ sensitive PHI as described herein constitutes gross negligence and a clear departure from all reasonable standards of care.” (Compl., at ¶38). Additionally, Plaintiff alleges, “Defendants’ reckless indifference to the proper security measures necessary to protect their members’ sensitive PHI created the opportunity necessary for a malicious third party to directly access the PHI data.” (Compl., at ¶43).

- c. Count III (negligence per se): Plaintiff states that, “[f]ederal law requires health plans to ‘have in place appropriate administrative, technical, and physical safeguards to protect the privacy of protected health information.’ . . . Furthermore, federal law further requires the actual implementation of such safeguards.” (Compl., at ¶48) Plaintiff alleges “it is obvious that Defendants did not have in place or implement the federally required appropriate safeguards, from the fact that: (i) employees had the ability to copy sensitive PHI onto the Flash Drive; (ii) the PHI data was not encrypted or otherwise protected; (iii) employees routinely took the Flash Drive to community health fairs; (iv) the Flash Drive was not physically secured; and (v) Defendants are still unable to account for the whereabouts of the Flash Drive.” (Compl., at ¶¶50).

10. Plaintiff seeks several forms of relief including relief under federal law. (Compl., at Prayer for Relief, at 10).

- a. Plaintiff requests the court issue a declaratory judgment “that Defendants’ misconduct...violated the Federal Regulation governing Privacy of Individually Identifiable Health Information.” (Compl., at Prayer for Relief ¶B).
- b. Further, Plaintiff prays for an order granting injunctive relief and other equitable relief . . . requiring Defendants to protect, consistent with federal, state, and industry standards, all Class member data they collect . . .” (Compl., at Prayer for Relief ¶C).

#### **IV. FEDERAL QUESTION JURISDICTION UNDER 28 U.S.C. § 1331**

11. This Court has original jurisdiction over this action under 28 U.S.C. § 1331, because it is a civil action of which the district courts have original jurisdiction founded on a claim or right arising under the Constitution, treaties or laws of the United States, and Plaintiff’s claims, including its state law claims, turn on a substantial question of federal law.

12. 28 U.S.C. § 1331 provides that “[t]he district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.”

13. The United States Supreme Court, “has . . . long recognized that such jurisdiction will lie over some state-law claims that implicate significant federal issues.” *Grable & Sons Metal Prods., Inc. v. Darue Eng’g & Mfg.*, 545 U.S. 308, 312 (2005).

14. Where a Plaintiff’s Complaint “either establishes that federal law creates the cause of action or that the plaintiff’s right to relief necessarily depends on resolution of a substantial question of federal law,” federal jurisdiction is appropriate. *Koresko v. Murphy*, 464 F. Supp.2d 463, 468 (E.D. Pa. 2006) (citations omitted).

15. “[A] federal court ought to be able to hear claims recognized under state law that nonetheless turn on substantial questions of federal law, and thus justify resort to the experience, solicitude, and hope of uniformity that a federal forum offers on federal issues.” *Grable & Sons metal Prods., Inc. v. Darue Eng’g & Mfg.*, 545 U.S. 308, 312 (2005).

16. As demonstrated above, even though Plaintiff couches his legal claims as matters of *State* law, the resolution of such claims rests entirely on the application and interpretation of the duties imposed by *federal* law, *i.e.*, HIPAA and the regulations promulgated thereunder. Indeed, Plaintiff is requesting a declaratory judgment to the effect that Defendants failed to comply with HIPAA and its corresponding regulations. Thus,

- a. In its Prayer for Relief, Plaintiff asks the Court for an order granting relief by, “[d]eclaring that Defendants’ misconduct, as described herein, violated the Federal Regulation governing Privacy of Individually Identifiable Health Information.” (Compl., at Prayer for Relief, ¶B).
- b. As a basis for his negligence per se claim, Plaintiff asks the court to determine whether Defendants’ alleged actions violated federal law. In his Complaint, Plaintiff states that “Federal Law requires health plans to ‘have in place appropriate administrative, technical, and physical safeguards to protect the privacy of protected health information.’” (Compl., at ¶47). Further, Plaintiff alleges that the Defendants “did not have in place or implement the federally required appropriate safeguards.” (Compl., at ¶49).
- c. Further, in its Prayer for Relief, Plaintiff seeks injunctive relief, “requiring Defendants to protect, consistent with federal, state, and industry

standards, all Class member data they collect in the course of their business.” (Compl., at Prayer for Relief, ¶C.)

17. Assuming that Plaintiff’s child has suffered any cognizable injury, though none is pleaded with any specificity (an issue that must be considered in any initial substantive response to the complaint), it is clear not only that Plaintiff’s claims require the application of federal law but that the application of State law would disturb the manifest and preemptive federal interest in and need for uniformity with respect to regulatory schemes governing privacy of protected health information.

18. The federal government has evinced a strong interest in national uniformity with respect to the privacy of protected health information.

- a. The Preamble to the Standards for Privacy of Individually Identifiable Health Information, Final Rule (hereinafter “Privacy Rule”) states that one of the main purposes of the Privacy Rule is to promote national uniformity of health privacy protections. According to the Privacy Rule, one of the three major purposes is, “to improve the efficiency and effectiveness of health care delivery by creating a national framework for health privacy protection that builds on efforts by states, health systems and individual organizations and individuals.” 75 Fed. Reg. 82463.
- b. Further the Department of Health and Human Services (hereinafter “HHS”) stated in the Preamble to the Privacy rule, “[a]n examination of state health privacy laws and regulations, however, found that ‘state laws, with a few notable exceptions, do not extend comprehensive protections to people’s medical records.’” In response to the inconsistency of state law

privacy protections HHS stated, “[t]his final rule establishes, for the first time, a set of basic national privacy standards and fair information practices that provides all Americans with a basic level of protection and peace of mind that is essential to their full participation in their care.” 75 Fed. Reg. 82463.

19. It also is the plain intention of Congress to provide for federal jurisdiction. Indeed, Congress recently amended HIPAA through passage of the Health Information Technology for Economic and Clinical Health (hereinafter, “HITECH Act”) to provide for a civil action, brought by state attorneys general, may be brought through the federal courts. “[I]n any case in which the attorney general of a State has reason to believe that an interest of one or more of the residents of that State has been or is threatened or adversely affected by any person who violates a provision of this part, the attorney general of the State, as *parens patriae*, may bring a civil action on behalf of such residents of the State in a district court of the United States of appropriate jurisdiction.” 42 U.S.C. § 1320d-5(d)(1) (*emphasis added*).

20. Further, HIPAA as amended by HITECH states, “[a]ny action brought under paragraph (1) [state attorney general enforcement] may be brought in the district court of the United States that meets applicable requirements relating to venue under section 1391 of title 28.” 42 U.S.C. § 1320d-5(d)(6)(A).

#### **IV. REMOVAL IS PROPER**

21. The United States District Court for the Eastern District of Pennsylvania is the federal judicial district embracing the Court of Common Pleas of Philadelphia County, where the suit was originally filed. Venue is therefore proper in this Court under 28 U.S.C. §1441(a).

22. This Court has original jurisdiction pursuant to 28 U.S.C. §1331 and removal of this action to this court is proper pursuant to 28 U.S.C. §1441.

23. As noted above, Defendants have attached a copy of all process, pleadings and orders served upon, in accordance with 28 U.S.C § 1446(a) as Exhibit "A" .

24. This Notice is being filed within 30 days after Defendants were served with the Complaint and, therefore, is timely filed pursuant to 28 U.S.C. § 1446(b).

25. Pursuant to 28 U.S.C. § 1446 (d) undersigned counsel certifies that the Notice of Removal will be served promptly on Plaintiffs and will be filed with the Clerk of the Court of Common Pleas of Philadelphia County. A copy of the Notice being filed with the Clerk of the Court of Common Pleas of Philadelphia County is attached hereto as Exhibit "B."

26. Wherefore, Defendants remove this action to the United States District for the Eastern District of Pennsylvania.

Dated: February 23, 2011

Respectfully submitted,

RAWLE & HENDERSON, LLP

By: \_\_\_\_\_  
CHARLES A. FITZPATRICK, III  
WILLIAM C. McGOVERN  
Identification Nos. 23212/18456  
Rawle & Henderson LLP  
One S. Penn Square, 16<sup>th</sup> Floor  
The Widener Building  
Philadelphia, PA 19107  
Attorneys for Defendants



EXHIBIT “A”

Court of Common Pleas of Philadelphia County  
Trial Division**Civil Cover Sheet**

PROTHONOTARY USE ONLY (DO NOT WRITE)  
**JANUARY 2011**  
 003878

PLAINTIFF'S NAME AVRUM M. BAUM		DEFENDANT'S NAME KEYSTONE MERCY HEALTH PLAN	
PLAINTIFF'S ADDRESS 7625 DORCAS STREET PHILADELPHIA PA 19111		DEFENDANT'S ADDRESS 200 STEVENS DRIVE PHILADELPHIA PA 19113	
PLAINTIFF'S NAME		DEFENDANT'S NAME AMERIHEALTH MERCY HEALTH PLAN	
PLAINTIFF'S ADDRESS		DEFENDANT'S ADDRESS 8040 CARLSON ROAD HARRISBURG PA 17112	
PLAINTIFF'S NAME		DEFENDANT'S NAME	
PLAINTIFF'S ADDRESS		DEFENDANT'S ADDRESS	
TOTAL NUMBER OF PLAINTIFFS <b>1</b>	TOTAL NUMBER OF DEFENDANTS <b>2</b>	COMMENCEMENT OF ACTION <input checked="" type="checkbox"/> Complaint <input type="checkbox"/> Petition Action <input type="checkbox"/> Notice of Appeal <input type="checkbox"/> Summons <input type="checkbox"/> Transfer From Other Jurisdictions	
AMOUNT IN CONTROVERSY <input type="checkbox"/> \$50,000.00 or less <input checked="" type="checkbox"/> More than \$50,000.00	COURT PROGRAMS <input type="checkbox"/> Arbitration <input type="checkbox"/> Commerce <input type="checkbox"/> Settlement <input type="checkbox"/> Jury <input type="checkbox"/> Minor Court Appeal <input type="checkbox"/> Minors <input type="checkbox"/> Non-Jury <input type="checkbox"/> Statutory Appeals <input type="checkbox"/> W/D/Survival <input checked="" type="checkbox"/> Other:		
CASE TYPE AND CODE <b>C1 - CLASS ACTION</b>			
STATUTORY BASIS FOR CAUSE OF ACTION			
RELATED PENDING CASES (LIST BY CASE CAPTION AND DOCKET NUMBER)		<b>FILED PRO PROTHY</b> <b>JAN 28 2011</b> <b>J. MURPHY</b>	
IS CASE SUBJECT TO COORDINATION ORDER?		YES    NO	
TO THE PROTHONOTARY: Kindly enter my appearance on behalf of Plaintiff/Petitioner/Appellant: <u>AVRUM M BAUM</u> Papers may be served at the address set forth below.			
NAME OF PLAINTIFF'S/PETITIONER'S/APPELLANT'S ATTORNEY <b>MARC L. ACKERMAN</b>		ADDRESS <b>BRODSKY &amp; SMITH LLC</b> <b>TWO BALA PLAZA</b> <b>SUITE 602</b> <b>BALA CYNWYD PA 19004</b>	
PHONE NUMBER <b>(610) 667-6200</b>	FAX NUMBER <b>(610) 667-9029</b>		
SUPREME COURT IDENTIFICATION NO. <b>56294</b>		E-MAIL ADDRESS <b>mackerman@brodsky-smith.com</b>	
SIGNATURE OF FILING ATTORNEY OR PARTY <b>MARC ACKERMAN</b>		DATE SUBMITTED <b>Friday, January 28, 2011, 02:27 pm</b>	

FINAL COPY (Approved by the Prothonotary Clerk)

Evan J. Smith, Esquire (PA Bar ID 79032)  
Marc L. Ackerman, Esquire (PA Bar ID 56294)  
BRODSKY & SMITH, LLC  
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*Attorneys for Plaintiffs*

[Additional Plaintiffs' Counsel Appear on Signature Page]

AVRUM M. BAUM, as parent and guardian of  
Chaya Baum, Individually and on behalf of all  
others similarly situated,

Plaintiff,

v.

KEYSTONE MERCY HEALTH PLAN, and  
AMERIHEALTH MERCY HEALTH PLAN,

Defendants.

: COURT OF COMMON PLEAS  
: PHILADELPHIA COUNTY  
: COMMERCE DIVISION  
:  
:

NO. \_\_\_\_\_

JURY TRIAL DEMANDED  
:  
:  
:

### NOTICE

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

PHILADELPHIA BAR ASSOCIATION  
LAWYER REFERRAL AND INFORMATION SERVICE  
One Reading Center  
Philadelphia, Pennsylvania 19107  
Telephone: 215-238-1701

Case ID: 11010387

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*Attorneys for Plaintiffs*

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: COURT OF COMMON PLEAS  
: PHILADELPHIA COUNTY  
: COMMERCE DIVISION

: NO. \_\_\_\_\_

: JURY TRIAL DEMANDED

### COMPLAINT

#### NATURE AND SUMMARY OF ACTION

1. Plaintiff Avrum M. Baum, as the parent and guardian of Chaya Baum ("Plaintiff"), brings this class action complaint on behalf of himself and all other similarly situated individuals (the "Class") whose privacy was violated through the misfeasance of Keystone Mercy Health Plan ("Keystone") and its affiliate, AmeriHealth Mercy Health Plan ("AmeriHealth," and collectively, the "Companies" or "Defendants"). Plaintiff seeks redress for invasion of privacy caused by the loss of a portable computer USB flash drive ("Flash Drive") containing the personal health information ("PHI") of Plaintiff and other Class members.

2. Defendants, in violation of federal and state law and industry standards, including 45 C.F.R. 164.530, 73 P.S. § 201-204, 31 Pa. Code § 146c and the common law, carelessly and recklessly failed to properly protect Plaintiff's and other Class members' PHI.

3. Defendants, at least negligently, failed to encrypt the PHI data on the Flash Drive, enabling unauthorized parties to access the PHI data.

4. Defendants permitted their employees to transport the unprotected PHI data on the Flash Drive to community health fairs notwithstanding the increased likelihood that Plaintiff's and other Class members' PHI data on the Flash Drive would be accessed by unauthorized persons or for unauthorized purposes.

5. Plaintiff's and the Class members' PHI was compromised as a direct and proximate result of Defendants' unlawful conduct.

6. Even after the damage to Plaintiff and the Class was done, Defendants failed to properly mitigate the harmful effects caused by their misconduct.

#### **THE PARTIES**

7. Plaintiff is a resident of Philadelphia, Pennsylvania. He is the parent and guardian of Chaya Baum, who has a health insurance policy with Defendant Keystone. Upon information and belief, Chaya Baum's individual PHI data was contained on the Flash Drive that "went missing."

8. Defendant Keystone, a Pennsylvania corporation, is a health insurance provider headquartered in Philadelphia, Pennsylvania. Keystone is Pennsylvania's largest Medicaid managed health plan, serving more than 300,000 Medicaid recipients in Southeastern Pennsylvania.

9. Defendant AmeriHealth, an affiliate of Defendant Keystone, is a Pennsylvania corporation headquartered in Harrisburg, Pennsylvania. AmeriHealth is a Medicaid managed health plan, serving more than 100,000 Medicaid recipients primarily located in Northeastern Pennsylvania. Collectively, Keystone and AmeriHealth insure more than 400,000 Medicaid recipients in the Commonwealth of Pennsylvania.

#### **CLASS ACTION ALLEGATIONS**

10. Plaintiff brings this class action pursuant to Rule 1702 of the Pennsylvania Rules of Civil Procedure, on behalf of all Keystone and AmeriHealth policyholders whose PHI was compromised through the Defendants' improper handling of the Flash Drive.

11. Excluded from the Class are: (i) Defendants, Defendants' subsidiaries, parents, successors, predecessors, and any entity in which Defendants or their parents have a controlling interest and their current or former employees, officers and directors; (ii) persons who properly execute and file a timely request for exclusion from the Class; and (iii) the legal representatives, successors or assigns of any such excluded persons as well as any individual who contributed to the unauthorized access of the PHI data.

12. Upon information and belief, the Class is comprised of hundreds of thousands of persons, making the joinder of such cases impracticable. Disposition of the claims in a class action will provide substantial benefits to both the parties and the Court.

13. In addition to the large size of the Class, there are questions of law and fact that are common to the Class and that predominate over questions affecting any individual Class member, including:

- a. Whether Defendants were negligent in collecting and storing Plaintiff's and the Class members' PHI;

b. Whether Defendants took reasonable steps and measures to safeguard Plaintiff's and the Class members' PHI;

c. Whether Defendants breached their duty to exercise reasonable care in storing Plaintiff's and the Class members' PHI by storing that data in the manner in which they did;

d. Whether Plaintiff and the Class are at an increased risk of identity theft or other malfeasance as a result of Defendants' failure to protect the PHI of Plaintiff and the Class; and

e. Whether Plaintiff and the Class members have sustained damages, and if so, to what degree.

14. Plaintiff's claims are typical of the claims of the Class he seeks to represent. The compromised PHI and subsequent injuries of Plaintiff and the Class resulted from Defendants' uniform wrongful conduct.

15. Plaintiff will fairly and adequately represent and protect the interests of the Class. Plaintiff has no interest that is antagonistic to those of the Class and Defendants have no defenses unique to Plaintiff.

16. Plaintiff has retained counsel competent and experienced in complex litigation and class actions.

17. Given the size of the Class and the accompanying impracticability of joinder of all potential plaintiffs, a class action is superior to all other available methods for the fair and efficient adjudication of this controversy.

18. Furthermore, because the damages suffered by individual members of the Class may be relatively small, few, if any, of the Class members could bear the expense of individual

litigation. This would have the detrimental effect of allowing Defendants to engage in unlawful conduct without opportunity for the various Class members to seek justice and redress for their injuries.

19. Furthermore, individual actions create the potential for varied adjudications with respect to the individual plaintiffs, which would confront the party opposing the Class with incompatible standards of conduct.

20. The prosecution of separate actions by individual members of the Class would also create a risk of adjudications with respect to individual members of the Class that would, as a practical matter, be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests.

21. The parties opposing the Class have acted or refused to act on grounds generally applicable to the Class, thereby making final injunctive relief appropriate with respect to the Class as a whole.

#### **SUBSTANTIVE ALLEGATIONS**

22. On September 20, 2010, a Flash Drive containing the personal and sensitive health information of more than 280,000 individuals insured by Keystone and AmeriHealth, including Plaintiff and other Class members, went missing from the Companies' corporate offices. The security breach impacts approximately two-thirds of Keystone's and AmeriHealth's subscribers. According to the Philadelphia Inquirer, "[t]he loss is one of the largest recent security breaches of personal health data in the nation."

23. Defendants did not inform Plaintiff and the other Class members of the privacy breach until October 29, 2010, close to six weeks after the Flash Drive disappeared, and only after a request was made of Defendants by the Philadelphia Inquirer.



24. On October 29, 2010, in a letter addressed to Plaintiff (the "Letter"), Keystone made its first disclosure to the public concerning the lost Flash Drive.

Keystone Mercy Health Plan wants to let you know that our staff copied your child's member identification number and health screening information onto a portable computer drive. The drive was lost within our office on September 20, 2010, and we have not been able to find it. Please accept our apology. We deeply regret that your child's information may have been shared.

\* \* \*

We have thoroughly investigated this situation. We can assure you we have taken precautions to prevent this from happening again. We have put safety measures in place that will not let our employees put unencrypted (or un-coded) personal information on a portable drive. We have also re-trained our employees on the importance of protecting the privacy and security of confidential information.

25. Keystone never identified the precise nature of the lost personal information contained on the missing Flash Drive, saying simply that the information lost was "health screening information."

26. Upon information and belief, the personal information contained on the lost Flash Drive included, but was not limited to, names, addresses, phone numbers, both AmeriHealth and Keystone insurance identification numbers, full and partial social security numbers, sensitive financial information, and sensitive health histories of Plaintiff and the other Class members

27. Furthermore, Defendants permitted their employees to routinely transport the Flash Drive to community health fairs, notwithstanding that the Flash Drive contained private and personal PHI data that could be wholly accessed either by unauthorized individuals or by individuals authorized to access only select portions of that information. Defendants were at least negligent in permitting the transportation of the Flash Drive, which contained hundreds of thousands of sensitive records, to health fairs.

28. Upon information and belief, the lost Flash Drive was not encrypted or otherwise protected, allowing unfettered access to Plaintiff's and other Class members' private and personal information.

29. Defendants at least negligently failed to properly secure the contents of the Flash Drive and failed to impose restrictions upon either the persons permitted to access said contents or the scope of the data to be accessed. Thus, Defendants have failed to protect the PHI data and as a result, Plaintiff and the other Class members cannot adequately protect themselves from both the improper disclosure and the potential misuse of their PHI data.

### **COUNT I**

#### **Violation of the Pennsylvania Unfair Trade Practices and Consumer Protection Law**

30. Plaintiff incorporates by reference and re-alleges each and every allegation contained above as though fully set forth herein.

31. The conduct described above and throughout this Complaint constitutes unfair methods of competition or unfair or deceptive acts or practices in violation of §201-2(4)(xiv) and (xxi) of the Pennsylvania Unfair Trade Practices and Consumer Protection Law (hereinafter, the "UTPCPL"), 73 P.S. §201-1 *et seq.*

32. Plaintiff and the other Class members are residents of the Commonwealth of Pennsylvania having valid and in-force health insurance policies with Defendants Keystone and AmeriHealth primarily for personal, family or household purposes within the meaning of 73 P.S. §201-9.2.

33. Defendants used and employed unfair methods of competition and/or unfair or deceptive acts or practices within the meaning of the UTPCPL. Such unfair methods of

competition and/or unfair or deceptive acts or practices include, but are not limited to, the following:

a. Failing to comply with the terms of written guarantees or warranties given to the Plaintiff and the other Class members at, prior to, or after a contract for the purchase of goods or services was made, under §201-2(4)(xiv) because of the failure to comply with the privacy policies assuring Plaintiff and the Class members that Defendants “set up ways to make sure that all personal health information is used correctly”; and

b. Engaging in fraudulent or deceptive conduct which created a likelihood of confusion or of misunderstanding under §201-2(4)(xxi) because Defendants created confusion or misunderstanding about the supposed safeguards Defendants purportedly had in place to ensure that the PHI of Plaintiff and the Class was adequately protected.

## COUNT II

### Negligence

34. Plaintiff incorporates by reference and re-alleges each and every allegation contained above as though fully set forth herein.

35. Plaintiff and the Class disclosed highly personal and sensitive information to Defendants Keystone and AmeriHealth.

36. Defendants are and were required to exercise reasonable care to safeguard that information.

37. Defendants failed to exercise reasonable care and also failed to provide Plaintiff and the Class with prompt and sufficient notice that their PHI was compromised, breaching their duty to Plaintiff and the Class.

38. Defendants' failure to take proper security measures to protect Plaintiff's and the Class' sensitive PHI as described herein constitutes gross negligence and a clear departure from all reasonable standards of care.

39. The Defendants' negligence in allowing the Flash Drive to be taken to community health fairs contravened industry standards. Dr. Deborah Peel, a Texas psychiatrist who heads an industry advocacy group, "Patient Privacy Rights," noted: "[T]hat seems grossly irresponsible... I can't imagine what [Keystone and AmeriHealth] were thinking, taking this data out of a locked room at company headquarters."

40. As a direct and proximate result of Defendants' failure to exercise reasonable care and comply with statutory and industry standards of reasonable security measures, Plaintiff's and the Class's highly sensitive PHI was accessed and compromised without authorization.

41. The security breach and resulting unauthorized access to the PHI of Plaintiff and the Class was reasonably foreseeable to Defendants.

42. Neither Plaintiff nor the Class contributed to the security breach described herein.

43. Defendants' reckless indifference to the proper security measures necessary to protect their members' sensitive PHI created the opportunity necessary for a malicious third party to directly access the PHI data. But for Defendants' reckless and/or grossly negligent behavior, Plaintiff's and the Class's PHI would never have been compromised or improperly accessed.

44. Plaintiff and the Class members have suffered irreparable injury as a result of Defendant's negligence. Because the stolen information cannot be "returned," the harm suffered by Keystone's misconduct is continuing.

45. As a direct and proximate result of Defendants' misconduct, Plaintiff and the Class were injured.

### COUNT III

#### Negligence Per Se

46. Plaintiff incorporates by reference and re-alleges each and every allegation contained above as though fully set forth herein.

47. Federal law requires health plans to "have in place appropriate administrative, technical, and physical safeguards to protect the privacy of protected health information." 45 C.F.R. 160.103, 164.530(c)(1).

48. Furthermore, federal law further requires the actual implementation of such safeguards: "A covered entity must reasonably safeguard protected health information from any intentional or unintentional use or disclosure that is in violation of the standards, implementation specifications or other requirements of this subpart." 45 C.F.R. 164.530(c)(2)(I).

49. In its October 29, 2010 Letter, Keystone conceded that no such appropriate technical and physical safeguards were in place or implemented prior to the Flash Drive's disappearance. The Letter stated: "[W]e can assure you we have taken precautions to prevent this from happening again. We have put safety measures in place that will not let our employees put unencrypted... personal information on a portable drive." Thus, Keystone itself acknowledged that safeguards preventing such misfeasance were not in place prior to the Flash Drive being lost.

50. Moreover, even without Keystone's concession, it is obvious that Defendants did not have in place or implement the federally required appropriate safeguards, from the fact that: (i) employees had the ability to copy sensitive PHI onto the Flash Drive; (ii) the PHI data was

not encrypted or otherwise protected; (iii) employees routinely took the Flash Drive to community health fairs; (iv) the Flash Drive was not physically secured; and (v) Defendants are still unable to account for the whereabouts of the Flash Drive.

51. Defendants did not have the proper safeguards in place or failed to properly implement such safeguards. Defendants' failure to properly secure and safeguard Plaintiff's and the Class members' PHI proximately caused the September 20, 2010 disappearance of the unencrypted health information and other private information contained on the Flash Drive.

52. As alleged herein, Defendants' conduct constituted unfair methods of competition or unfair or deceptive acts or practices in violation of §201-2(4)(xiv) of the UTPCPL.

53. Defendants' conduct was also in violation of 31 Pa. Code 146c.3-4, which required Defendants to implement an appropriately designed, comprehensive written information security program including administrative, technical and physical safeguards for the protection of customer information from unauthorized access or use. As set forth above, Defendants did not have in place such reasonable safeguards.

54. Defendants' violations of the above mentioned federal and Pennsylvania law constituted negligence per se and resulted in injury to Plaintiff and the Class.

55. The harm Defendants caused to Plaintiff and the Class is exactly the type of injuries the federal and Pennsylvania statutes were designed to protect.

56. Plaintiff and the Class are persons for whose protection the statutes were legislated.

57. Defendants' violation of the statutes as described herein resulted in injury to Plaintiff and the Class.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, individually and on behalf of the Class, prays for an order granting the following relief:

A. Certifying of this case as a class action on behalf of the Class defined above, appointment of Plaintiff Avrum M. Baum as class representative and his counsel as class counsel;

B. Declaring that Defendants' misconduct, as described herein, violated the Federal Regulation governing Privacy of Individually Identifiable Health Information (45 C.F.R. 160 *et seq.*), the Pennsylvania Unfair Trade Practices and Consumer Protection Law (73 P.S. §201-1 *et seq.*) and the Pennsylvania Code governing Privacy of Consumer Health Information (31 Pa. Code § 416b.1), and constitutes negligence and negligence per se.

C. Awarding injunctive relief and other equitable relief as is necessary to protect the interest of Plaintiff and the Class, including, an order, *inter alia*: (i) prohibiting Defendants from engaging in the wrongful and unlawful acts described herein; (ii) requiring Defendants to protect, consistent with federal, state, and industry standards, all Class member data they collect in the course of their business; and (iii) requiring Defendants to properly mitigate the harmful effects of their wrongful and unlawful conduct;

D. Awarding damages, including statutory damages where applicable and punitive damages, to Plaintiff and the Class in an amount to be determined at trial;

E. Awarding all economic, monetary, actual, consequential, and compensatory damages caused by Defendants' conduct;

F. Awarding restitution of all monies to which Plaintiff and the Class are entitled to in equity;

- G. Awarding Plaintiff and the Class their reasonable fees and expenses in connection with this litigation, including reasonable attorneys' and experts' fees and expenses;
- H. Awarding Plaintiff and the Class pre- and post-judgment interest, to the extent allowable; and
- I. Granting such other and further relief as the Court deems just and proper.

**JURY DEMAND**

Plaintiff requests trial by jury of all claims that can be so tried.

Dated: January 28, 2011

**BRODSKY & SMITH, LLC**

By: 

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Marc L. Ackerman, Esquire  
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**WEISS & LURIE**

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*Attorneys for Plaintiffs*



EXHIBIT “B”

**RAWLE & HENDERSON, LLP**

**BY: Charles A. Fitzpatrick, III/Arthur B. Keppel**

**William C. McGovern/Patrice S. O'Brien**

**Identification No: 23212/47773/18356/47482**

**The Widener Building**

**One South Penn Square**

**Philadelphia, PA 19107**

**215-575-4200**

**Attorneys for Defendants,  
Keystone Mercy Health Plan  
and AmeriHealth Mercy Health  
Plan**

---

**AVRUM M. BAUM, as parent and guardian of  
Chaya Baum, Individually and on behalf of  
all other similarly situated**

**vs.**

**KEYSTONE MERCY HEALTH PLAN and  
AMERIHEALTH MERCY HEALTH PLAN**

**: COURT OF COMMON PLEAS  
: PHILADELPHIA COUNTY  
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:  
: JANUARY TERM, 2011  
:  
: NO. 3876  
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**NOTICE OF FILING  
NOTICE OF REMOVAL**

Defendants, Keystone Mercy Health Plan and AmeriHealth Mercy Health Plan, through counsel and pursuant to 28 U.S.C. § 1446(d), hereby gives notice of the filing of the attached Notice of Removal which has been filed in the United States District Court, Eastern District of Pennsylvania, Case No. \_\_\_\_\_.

**RAWLE & HENDERSON LLP**

**BY: **

**Charles A. Fitzpatrick, III**

**William C. McGovern**

**Arthur B. Keppel**

**Patrice S. O'Brien**

**Attorneys for Defendants**

**CERTIFICATION OF SERVICE**

I, William C. McGovern, attorney for defendants, Keystone Mercy Health Plan and AmeriHealth Mercy Health Plan, certify that a true and correct copy of the foregoing Notice of Removal for said defendants was served to the following via regular mail to the postal addresses shown on the date listed below:

Evan J. Smith, Esquire  
Marc L. Ackerman, Esquire  
Brodsky & Smith, LLC  
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Bala Cynwyd, PA 19004  
610-667-6200  
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[mackerman@brodsky-smith.com](mailto:mackerman@brodsky-smith.com)  
Counsel for Plaintiffs

  
\_\_\_\_\_  
William C. McGovern

Date: 2/23/11